

Mathew K. Higbee, Esq., SBN 106514
HIGBEE & ASSOCIATES
1504 Brookhollow Dr., Suite 112
Santa Ana, CA 92705
(714) 617-8350
(714) 597-6729 facsimile
Email: mhigbee@higbeeassociates.com

Attorney for Plaintiff,
CHRISTOPHER SADOWSKI,

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION**

CHRISTOPHER SADOWSKI,

Plaintiff,

v.

HENRY SHIVLEY d/b/a
www.fromthetrenchesworldreport.com;
and DOES 1 through 10 inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Plaintiff CHRISTOPHER SADOWSKI, for his complaint against HENRY SHIVLEY d/b/a www.fromthetrenchesworldreport.com, and DOES 1 through 10 inclusive, Defendants, alleges as follows:

INTRODUCTION

1. Christopher Sadowski (hereinafter “Plaintiff”), by counsel, brings

this action against Henry Shivley d/b/a www.fromthetrenchesworldreport.com (hereinafter “Defendant”), and DOES 1 through 10 inclusive, with regard to the unlawful use of copyrighted images owned by Plaintiff.

2. For the purposes of this Complaint for Damages, unless otherwise indicated, “Defendant” includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of the named Defendant.

3. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, sues such Defendants under such fictitious names. Plaintiff is informed and believes and on that basis alleges that such fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were proximately caused by the conduct of said Defendants. Plaintiff will seek to amend the complaint when the names and capacities of such fictitiously named Defendants are ascertained. As alleged herein, “Defendants” shall mean all named Defendants and all fictitiously named Defendants.

JURISDICTION AND VENUE

4. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, whereby the Defendant violated Plaintiff’s exclusive rights as copyright

owner pursuant to 17 U.S.C. §§ 106 and 106A.

5. This Court has personal jurisdiction over Defendant because, Defendant conducts business in the state of Oregon, Defendant's acts of infringement complained of herein occurred in the State of Oregon, and Defendant has caused injury to Plaintiff within the State of Oregon.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because, a substantial part of the events giving rise to Plaintiff's claim occurred in this judicial district. Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because, on information and belief, Defendant's principle place of business or residence is located within this judicial district.

PARTIES

7. Plaintiff Christopher Sadowski ("Plaintiff" or "Sadowski") is a professional photographer by trade residing in the City of Hawthorne in the State of New Jersey.

8. Plaintiff is the sole author and exclusive rights holder to a photograph of a car crash ("Image A") and a photograph of a vehicle collision with an officer ("Image B"), pursuant to 17 U.S.C. §§ 101 and 106. True and correct copies of Plaintiff's original Images are attached hereto as Exhibits A and B respectively.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant Henry Shivley is an individual doing business as

www.fromthetrenchesworldreport.com in the State of Oregon with its principle place of business at 419 E Ash Street, Chiloquin, OR 97624-999.

FACTUAL ALLEGATIONS

10. Plaintiff Christopher Sadowski is a professional photographer by trade. Sadowski has licensed or sold his photographs to dozens of major media outlets such as The New York Post, The Daily Mail, Boston Globe, Boston Herald, Los Angeles Times, Toronto Sun, Newsweek Magazine, People Magazine, the Associated Press, USA Today, The Wall Street Journal, Fox News, NBC News, MSNBC, Inside Edition, and TMZ.

11. Plaintiff is the sole author of the original Image.

12. By virtue of his sole authorship, Plaintiff has complete ownership rights and copyrights to the Image.

13. Plaintiff registered Image A with the U.S. Copyright Office on March 31, 2015 under registration number VA 1-954-323.

14. Plaintiff registered Image B with the U.S. Copyright Office on August 26, 2018 under registration number VA 2 019-488.

15. Image A originally appeared in an article published by the New York Post, *Bob Simon's driver had 'dead' arm, 9 prior license suspensions*, on February 12, 2015 ("Post Article A"). The article included attribution to Sadowski under the bottom left corner of Image A. A true and correct copy of

Post Article A is attached hereto as Exhibit C.

16. Image B originally appeared in an article published by the New York Post, *'I want to kill cops': Man who 'tried to run over' officers*, on January 8, 2015 ("Post Article B"). The article included attribution to Sadowski under the bottom left corner of Image B. A true and correct copy of Post Article B is attached hereto as Exhibit D.

17. On information and belief, defendant owns and operates the news site, www.fromthetrenchesworldreport.com (the "Website") and posts content to its Website to attract user traffic and drive advertising revenue. See <http://fromthetrenchesworldreport.com/advertise-here>.

18. On or about April 15, 2017, Plaintiff discovered that Defendant used Image A in an article on its website titled *Co-worker warned limo boss about Bob Simon's 'erratic' driver*, citing Post Article A and excluding the credit given to Sadowski. A true and correct copy of Defendant's infringing use of Plaintiff's Image A is attached hereto as Exhibit E.

19. On or about June 11, 2018, Plaintiff discovered that Defendant used Image B in an article on its website titled, *'I want to kill cops': Man who 'tried to run over' officers*, citing Post Article B and excluding the credit given to Sadowski. A true and correct time-stamped copy of Defendant's infringing use of Plaintiff's Image B is attached hereto as Exhibit F.

20. On or about August 13, 2018, Plaintiff's counsel attempted to contact Defendant with respect to Image B, but did not receive an answer. To this day, Image B remains on Defendant's website. *See* Exhibit F.

21. Plaintiff did not consent to authorize, permit, or allow in any manner the use of the Images by Defendant.

22. Plaintiff is informed and believes that Defendant used Plaintiff's copyrighted Image without his permission and that it published, communicated, posted, publicized and otherwise held out to the public for commercial benefit, the original and unique Image of Plaintiff without Plaintiff's consent or authority, and acquired monetary gain and market benefit as a result.

23. On information and belief, Defendant knew that it did not possess any rights in the Image and that its use of the Image was unauthorized.

24. On information and belief, Defendant's use of the Image was deliberate and willful.

25. On information and belief, Defendant willfully removed Sadowski's photo attribution because Defendant knew it did not have permission to use the Image on Defendant's Website.

FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 101, *et seq*

26. Plaintiff incorporates by reference all of the above paragraphs of this

Complaint as though fully stated herein.

27. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original Image.

28. Plaintiff is informed and believes and thereon alleges that the Defendant willfully infringed upon Plaintiff's copyrighted Image in violation of Title 17 of the U.S. Code, in that they used, published, communicated, benefited through, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Image of the Plaintiff without Plaintiff's consent or authority, and acquired monetary gain and market benefit as a result.

29. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to \$150,000.00 pursuant to 17 U.S.C. § 504(c).

30. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendant.

31. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

SECOND CAUSE OF ACTION
FALSIFICATION, REMOVAL AND ALTERATION OF COPYRIGHT
MANAGEMENT INFORMATION
17 U.S.C. § 1202

32. Plaintiff incorporates by reference all of the above paragraphs of this

Complaint as though fully stated herein.

33. On information and belief, Defendant knew that Plaintiff created the Image because, *inter alia*, the source of the Image, i.e. the Post Article, specifically attributed the Image to Plaintiff.

34. Defendant intentionally falsified copyright management information related to the Image with the intent to induce, enable, facilitate, or conceal an infringement of Plaintiff's rights under the Copyright Act. Specifically, Defendant purposefully failed to credit Plaintiff in order to mislead the public into believing that Defendant either owned the Image or had legitimately licensed it for use in the Infringing Article.

35. Defendant's conduct constitutes a violation of 17 U.S.C. § 1202(a), and 1202(b).

36. Defendant's falsification, removal and/or alteration of that copyright management information was done without Plaintiff's knowledge or authorization.

37. Defendant's falsification of said copyright management information was done by Defendant intentionally, knowingly, and with the intent to induce, enable, facilitate, or conceal Defendant's infringement of Plaintiff's copyright in the Image. Defendant also knew, or had reason to know, that such removal and/or alteration of copyright management information would induce, enable, facilitate,

or conceal Defendant's infringement of Plaintiff's copyright in the Image.

38. Plaintiff has sustained significant injury and monetary damages as a result of Defendant's wrongful acts as hereinabove alleged, and as a result of being involuntarily associated with Defendant in an amount to be proven.

39. In the alternative, Plaintiff may elect to recover statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of not more than \$25,000 from Defendant for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- For statutory damages against Defendant in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c);
- For statutory damages against Defendant pursuant to 17 U.S.C. § 1203(c)(3) in a sum of not more than \$25,000 for each violation of 17 U.S.C. § 1202;
- For general and special damages against Defendant according to proof together with interest thereon at the maximum legal rate;
- For costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- For an injunction preventing Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502; and

- For any other relief the Court deems just and proper.

Dated: September 25, 2018

Respectfully submitted,

/s/ Mathew K. Higbee
Mathew K. Higbee, Esq.
Oregon Bar No. 106514
HIGBEE & ASSOCIATES
1504 Brookhollow Dr., Ste 112
Santa Ana, CA 92705-5418
(714) 617-8325
(714) 597-6729 facsimile
Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff, Christopher Sadowski, hereby demands a trial by jury in the above matter.

Dated: September 25, 2018

Respectfully submitted,

/s/ Mathew K. Higbee
Mathew K. Higbee, Esq.
Oregon Bar No. 106514
HIGBEE & ASSOCIATES
1504 Brookhollow Dr., Ste 112
Santa Ana, CA 92705-5418
(714) 617-8325
(714) 597-6729 facsimile
Counsel for Plaintiff